

Tab 22

LANDFILL GAS SALES AGREEMENT

THIS AGREEMENT, is made and entered into this 30th day of June, 1995, by and between Manchester Renewable Power Corporation, a corporation organized under the laws of New Jersey, with an address at 29261 Wall Street, Wixom, Michigan 48393 ("MRPC") and GASCO, L.L.C., a limited liability company organized under the laws of New Jersey, with an address at 171 Palmer Street, Borough of Belford, New Jersey 07718 ("GASCO").

W I T N E S S E T H:

WHEREAS, GASCO has acquired or will acquire the exclusive right to possess and use the Ocean County Landfill Methane Collection System, and GASCO agrees to collect, deliver and sell the Landfill Gas produced therefrom to MRPC in accordance with the terms of this Agreement; and

WHEREAS, subject to the terms and conditions hereinafter set forth, MRPC desires to purchase such gas from GASCO for the purpose of generating electricity from a small power production facility for sale to a utility or other entity ("Power Purchaser") pursuant to the terms and conditions of a power purchase contract.

NOW, THEREFORE, for and in consideration of the promises and the mutual benefits and covenants contained herein, GASCO and MRPC hereby agree as follows:

ARTICLE I DEFINITIONS

Unless another definition is expressly stated, the following terms and abbreviations, when used in this Agreement and all

exhibits, recitals, and appendices related to this Agreement are intended to and will mean the following:

(a) "British Thermal Unit" or "BTU" means the amount of heat required to raise at standard conditions the temperature of one (1) pound of water one degree Fahrenheit at sixty degrees Fahrenheit.

(b) "Commercial Operation" means the date on which MRPC commences the production of electrical energy in commercial quantities from the Facility, as defined herein, for sale to Power Purchaser pursuant to the terms and conditions of a Power Purchase Contract, as defined herein.

(c) "Condensate Equipment" shall mean the gas flare and condensate collection system more specifically described in the approved engineering plans for the Ocean County Landfill.

(d) "Contract Year" shall mean initially the period commencing on the date hereof and ending on 12:00 a.m. on January 1 of the following year, and thereafter, shall mean each calendar year that this agreement remains in effect, except that the final Contract Year shall mean such partial year commencing on January 1 and ending on the date of termination of this Agreement.

(e) "Delivery Point" means the point of delivery as specified in Section 5.1 of this Agreement.

(f) "Escalation Factor" shall have the meaning specified in Section 7.2 hereof.

(g) "Facility" means the small power production facility as specified in Section 2.1 of this Agreement.

(h) "Force Majeure Event" means an event as defined in Section 11.1 hereof.

(i) "Gas" or "Natural Gas" or "Landfill Gas" means any gaseous mixture of hydrocarbons and noncombustible gases produced from the natural decomposition of biomass deposited in and under the real property subject to the 1985 Lease Agreement and delivered by GASCO to MRPC at the Point of Delivery specified herein.

(j) "Gross Facility Revenues" shall mean all amounts payable by Power Purchaser to MRPC under the Power Purchase Contract.

(k) "Higher Heating Value" or "HHV" means the total calorific value expressed in Btu's obtained by the complete combustion, at constant pressure, of the amount of gas that would occupy a volume of one cubic foot at a temperature of sixty degrees Fahrenheit (60°F.) if saturated with water vapor and under a pressure equivalent to that of thirty inches of mercury (30 inch.) at 32 degrees (32° F.) and under standard gravitational force (908.665 cm per sec.) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

(l) "Methane Collection System" means the system of subsurface piping and other appurtenant facilities existing on and under or hereinafter installed on and under the real property subject to the 1985 Lease Agreement, as defined herein, and utilized for the purpose of collecting the Landfill Gas.

- (m) "MMBtus" means one million British Thermal Units.
- (n) "1985 Lease Agreement" is that lease, dated January 1985, as amended from time to time, wherein Atlantic Pier Company, Inc. leases to the Ocean County Landfill Corporation certain real property, a portion of which includes the Leased Premises as defined herein.
- (o) "Leased Premises" means that real property located within the Township of Manchester, County of Ocean and State of New Jersey, more particularly described in Schedule A attached hereto and made a part hereof, upon which the Facility and any appurtenant structures will be constructed, operated, and maintained.
- (p) "Power Purchase Contract" means the agreement entered into or to be entered into between MRPC and the public utility or other entity purchasing the electric energy and capacity ("Power Purchaser") from the Facility.

ARTICLE II
PRELIMINARY ACTS; CONDITIONS

2.1 Concurrent with the execution of this Agreement, MRPC shall diligently undertake to complete the development, financing, and construction of a small power production facility (the "Facility") to be located at the site of the Leased Premises and to achieve Commercial Operation of the Facility by December 15, 1995.

2.2 Concurrent with the execution of this Agreement, GASCO shall diligently undertake such acts as will enable it (i) to acquire or maintain the exclusive right to possess and use the Methane Collection System, and (ii) to obtain all rights to the

Landfill Gas in order to collect, deliver and sell the Landfill Gas to MRPC in accordance with the terms of this Agreement.

2.3 The respective obligations of GASCO and MRPC hereunder are each expressly conditioned on the following:

(a) the execution and delivery in form and substance satisfactory to MRPC of:

(1) a Facility Site Lease by and between APLC, Inc. and MRPC wherein, among other things, MRPC obtains the rights to occupy and use a portion of the Leased Premises for the purpose of constructing and operating the Facility; and

(2) a Power Purchase Contract by and between Power Purchaser and MRPC in such form and substance as is acceptable by MRPC.

(b) The execution and delivery, in form and substance satisfactory to GASCO, of the Sublease of Landfill Gas Collection System, which must be binding and in effect before January 1, 1996, pursuant to which GASCO acquires (i) the exclusive right to possess and use the Methane Collection System and (ii) all rights to the Landfill Gas in order to collect, deliver and sell the Landfill Gas to MRPC.

(c) The execution and delivery, in form and substance satisfactory to APLC and OCLC, of the lease of the Leased Premises and the lease of the Methane Collection System to APLC by OCLC pursuant to the terms and conditions of the Facility Site and Methane Collection System Lease by and between APLC, Inc. and OCLC,

the Sublease of Landfill Gas Collection System by and between APLC, Inc. and GASCO, respectively, or the construction and operation of the Facility.

(d) Execution and delivery of the Gas Flare System Service Agreement by and between OCLC and MRPC.

(e) This Agreement shall be effective as of the date hereof. In the event that any governmental or regulatory approval or permit deemed necessary or advisable to consummate the transactions contemplated hereunder are not received, either party may terminate this Agreement. Such right of termination shall only be exercisable upon the failure to receive a governmental or regulatory approval or permit deemed necessary or advisable to consummate the transactions contemplated hereunder. The rights of MRPC and GASCO pursuant to this section 2.3(e) shall expire upon the earlier to occur of (i) Commercial Operation of the Facility pursuant to the Power Purchase Agreement, or (ii) December 31, 1995.

ARTICLE III **QUANTITY**

3.1 Pursuant to the terms, conditions, and limitations hereof, GASCO will deliver to MRPC each day that this Agreement is in effect such quantities of Landfill Gas as GASCO may collect and tender for delivery to MRPC at the Point of Delivery specified herein.

3.2 Commencing on the effective date hereof, MRPC shall take, pay for, and consume, or otherwise dispose of, all of the MMBtus of gas tendered by GASCO hereunder. MRPC shall not sell or transfer

any Landfill Gas to any other person without the prior written consent of GASCO.

ARTICLE IV
QUALITY

4.1 MRPC and GASCO understand and agree that the Landfill Gas to be delivered hereunder shall be in such state and composition of hydrocarbons, water vapor, oxygen, carbon dioxide, and other constituents as is collected by GASCO and delivered to MRPC.

4.2 GASCO makes no representations or warranties with respect to the composition, heating value, or any other property of the Landfill Gas and MRPC acknowledges and agrees that it shall have no rights hereunder to refuse to take delivery of and make payment for such quantities of Landfill Gas as may be tendered by GASCO at the Delivery Point hereunder, or otherwise assert a claim of breach of this Agreement against GASCO or offset against any monetary obligations of MRPC to GASCO, if such refusal, claim, or offset is predicated on the unsuitability of the Landfill Gas delivered to MRPC hereunder.

ARTICLE V
DELIVERY

5.1 The Delivery Point for the Landfill Gas delivered by GASCO to MRPC hereunder shall be the point of interconnection of the Methane Gas Collection System to the Facility.

5.2 Title to the Landfill Gas sold hereunder shall pass to MRPC at the Delivery Point. As between the parties hereto, GASCO will be responsible for any loss of gas or damage or injury caused by the gas until same will have been delivered to MRPC hereunder,

after which delivery MRPC will be deemed to be in exclusive control and possession thereof and, as between the parties hereto, MRPC shall be responsible for any loss of gas or damage or injury caused thereby.

5.3 MRPC's facilities shall be designed to receive deliveries of the Landfill Gas at the Delivery Point at the varying pressures that may exist from time to time within the Methane Collection System.

ARTICLE VI **MEASUREMENT**

6.1 Higher Heating Value as defined herein shall be the unit of measurement for determining amounts payable by MRPC to GASCO for gas delivered hereunder.

6.2 Meter(s) and other related equipment and facilities shall be installed and maintained by or on behalf of GASCO and will be the exclusive method and means of determining the quantity of gas, as measured by its HHV Btu content, delivered to MRPC hereunder, provided, that MRPC may require that GASCO provide MRPC with reasonable proof that GASCO's metering equipment and procedures provide a reasonable measure of the MMBtu's at HHV of the Landfill Gas delivered to MRPC hereunder.

ARTICLE VII **LANDFILL GAS PRICE**

7.1 From the date hereof through the end of the Contract Year in which Commercial Operation occurs, unless otherwise agreed to by the parties in writing, MRPC agrees to pay GASCO, for each MMBtu of

HEV delivered and sold by Seller hereunder, the price of [REDACTED]
[REDACTED] ("Initial Gas Price").

7.2 In each Contract Year after the Contract Year in which Commercial Operation occurs, the Gas Price shall be adjusted pursuant to this Section 7.2 ("Adjusted Gas Price"). The Adjusted Gas Price shall be the product of (x) the gas price in cents per MMBtu for the first preceding Contract Year, and (y) the Escalation Factor (as defined below). The Escalation Factor for a Contract Year shall equal the amount obtained by dividing (x) the inflation adjustment factor determined pursuant to Section 29(d)(2)(B) of the Internal Revenue Code of 1986, as amended ("Code") with respect to the first preceding Contract Year, by (y) the inflation adjustment factor determined pursuant to Code Section 29(d)(2)(B) with respect to the second preceding Contract Year. The Escalation Factor shall be determined, as soon as practical following the publication of all relevant information necessary to compute it.

Example: The inflation adjustment factor for 1992 was 1.8430, as published by the Internal Revenue Service ("Service") in Notice 93-28. The inflation adjustment factor for 1993 was 1.8918, as published by the Service in Notice 94-42. The inflation adjustment factor for 1994 was 1.9207, as published by the Service in Notice 95-____. Assume that the price per MMBtu was [REDACTED] for the 1993 contract year.

(A) For the calendar year 1994, the Escalation Factor would have been 1.0265 (1.8918 for 1993 divided by 1.8430 for 1992) and the Adjusted Gas Price per MMBtu would increase to [REDACTED] ([REDACTED] multiplied by 1.0265) for the 1994 contract year.

(B) For the calendar year 1995, the Escalation Factor would have been 1.0153 (1.9207 for 1994 divided by 1.8918 for 1993) and the Adjusted Gas

Price per MMBtu would increase to [REDACTED] (\$ [REDACTED]) multiplied by 1.0153) for the 1994 contract year.

Following the determination of the Adjusted Gas Price in any Contract Year, all purchases and sales of Landfill Gas shall be made at such Adjusted Gas Price. Within thirty (30) days following the determination of the Adjusted Gas Price in any Contract Year, MRPC shall make a payment to GASCO, or GASCO shall make a payment to MRPC, as the case may be, to retroactively adjust the purchase price to equal the Adjusted Gas Price for all Landfill Gas purchased during such Contract Year prior to the determination of the Adjusted Gas Price.

7.3 If publication of the inflation adjustment factor pursuant to Code Section 29(d)(2)(B) shall be discontinued, the parties agree to adopt an index published regularly by, or based upon information published regularly by, an agency of the United States, or another recognized financial authority, which as nearly as is practicable reflects the adjustment that would have been made by the inflation adjustment factor if it had been computed and published.

ARTICLE VIII **EFFECTIVE DATE AND TERM**

8.1 This Agreement will be effective as of the date hereof and shall terminate on (i) the expiration or early termination of the Power Purchase Contract, including any extensions or renewals thereof, (ii) the mutual agreement of the parties, or (iii) otherwise in accordance with the terms of this Agreement.

ARTICLE IX **BILLING AND PAYMENT**

9.1 On or before the tenth (10) working day of each month, GASCO shall prepare and provide to MRPC a statement setting forth: (a) the quantity of Landfill Gas delivered by GASCO to MRPC during the preceding calendar month (the "Billing Month"), (b) the calculation made in accordance with Article VII hereof of the applicable unit price for the Billing Month, and (c) the total amount due GASCO under Article VII herein for deliveries received by MRPC during the Billing Month.

9.2 Within twenty (20) days following the receipt of GASCO's statement, MRPC shall remit to GASCO payment for all gas received as specified in GASCO's statement.

ARTICLE X
FORCE MAJEURE

10.1 The failure of either MRPC or GASCO to perform any of its obligations hereunder by reason of an act or event beyond such party's reasonable control, including acts of God or a public enemy, strikes, riots, injunctions, or other interferences through legal proceedings initiated by third parties, breakage or accident to machinery or lines of pipe, washouts, earthquakes, storms, fires, flood, explosions, freezing or failure of wells or lines of pipe or related facilities, or applicable governmental regulation, action, order or directive, which prevents or materially impairs performance, or to any other causes not due to the fault of such party and not within the reasonable control of such party, shall be deemed a failure attributable to a "Force Majeure Event."

10.2 Such failure shall not be deemed to be a violation by such party of its obligations hereunder. A party shall give notice

and full particulars of such Force Majeure Event as soon as possible after the occurrence thereof. The obligations of the party unable to perform by reason of the Force Majeure Event shall be suspended for the duration of any Force Majeure Event; provided, however, that this provision shall not relieve MRPC of its obligation to make money payments hereunder with respect to prior periods.

10.3 The party giving such notice shall with all reasonable dispatch undertake such actions within its control to remedy the Force Majeure Event and resume the performance of its obligations hereunder.

ARTICLE XI **WARRANTY OF TITLE**

11.1 GASCO hereby warrants title to all Landfill Gas delivered hereunder and the right to sell the same to MRPC. GASCO agrees to indemnify, defend and save MRPC harmless against all suits, actions, debts, accounts, damages, costs, losses, and expenses, including reasonable attorneys' fees, arising from or out of any adverse legal claim of any and all persons to or against said gas prior to passage of title.

ARTICLE XII **TAXES**

12.1 GASCO shall pay all production, severance, gathering and similar taxes imposed on GASCO by any state or federal authority with respect to the gas delivered hereunder, and MRPC shall reimburse GASCO for the entire amount of any existing or future tax so paid by GASCO.

12.2 The term taxes as used in this Article XII shall not include capital stock, income, excess profits, franchise or general property taxes.

ARTICLE XIII **INDEMNIFICATION**

13.1 Each party shall indemnify, hold harmless and defend the other party, its officers, directors, employees and agents, from any and all actions, claims, suits or losses, including reasonable costs and attorneys' fees incident thereto, due to the damage, injury or loss to any property or the injury or death of any person arising from, caused or occasioned by the negligent, willful or intentional acts or omissions of a party or its employees or agents in the performance of its obligations hereunder or operation of its respective facilities. MRPC agrees to indemnify, hold harmless and defend GASCO, its officers, directors, employees, agents and assigns from any liabilities under the Power Purchase Contract. GASCO agrees to indemnify, hold harmless and defend MRPC, its officers, directors, employees, agents and assigns from any liabilities under its contract with APLC, Inc.

ARTICLE XIV **TERMINATION**

14.1 If any of the conditions specified at Section 2.3(a), (b), (c) or (d) have not been satisfied by December 15, 1996, then either MRPC or GASCO may terminate this Agreement by providing written notice to the other. Upon receipt of such notice neither MRPC nor GASCO shall have any further obligations hereunder to the other.

14.2 If either party hereto fails to perform any of the material covenants or obligations assumed by it hereunder, the other party may, at its option, terminate this Agreement by serving a written notice on the party in default, stating specifically the nature of the default and declaring it to be the intention of the party giving the notice to terminate the same, whereupon the party in default shall have sixty (60) days after the service of such notice to remedy or remove the cause or causes stated in the notice for terminating this Agreement, and if, within the succeeding period of sixty (60) days, the party in default does so remedy or remove said cause or causes, then such notice shall be withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of sixty (60) days, then the non-defaulting party may at its option either suspend its performance hereunder or terminate upon ten (10) days notice this Agreement. Any termination of this Agreement shall be without waiver of any remedy to which the party not in default may be entitled for violation of this Agreement.

ARTICLE XV
MISCELLANEOUS

15.1 The interpretation and performance of this Agreement shall be construed in accordance with the laws of the State of New Jersey.

15.2 Except as otherwise provided by this Agreement, any notice, request, demand, statement, bill, or payment delivered under this Agreement shall be in writing and will be considered

duly delivered when mailed, return receipt requested to the address of the parties, listed below:

Seller: GASCO, L.L.C
171 Palmer Street
Belford, New Jersey 07718
Attn: Charles J. Hesse, III

Buyer: Manchester Renewal Power Corporation
29261 Wall Street
Wixom, Michigan 48393
Attn: Scott D. Salisbury

15.3 The provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto. Neither party may assign any of its rights or delegate any of its duties hereunder without the written consent of the other.

15.4 This Agreement contains the entire agreement between the respective parties hereto and supersedes and incorporates all prior written, oral or implied provisions or other representations, indemnifications or understandings of any kind whatsoever, and may only be modified by written instrument executed by MRPC and GASCO or their permitted successors and assigns hereto.

15.5 This Agreement may be signed in counterparts. Each counterpart shall constitute an original and together with such other counterparts shall constitute one and the same Agreement.

15.6 The failure of either party to enforce at any time or for any period of time any provision of this Agreement shall not be construed to be a waiver of such provision or of the right of such party to enforce thereafter each provision.

15.7 Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto, and

their respective successors and assigns, any right, remedies, obligation or liabilities under or by reason of this Agreement.

15.8 MRPC and GASCO hereby acknowledge and agree that the breach by either of any duty or obligation arising under this Agreement will cause the other irreparable injury which is inadequately compensable in monetary damages, and, accordingly, either GASCO or MRPC may seek specific performance or such other equitable relief as may be appropriate in addition to any remedy at law.

15.9 GASCO and MRPC each hereby agree to use reasonable efforts to provide each other with such additional instruments, documents or other further assurances as the other may reasonably request in furtherance of the development, financing, construction, or operation of the Facility, or the performance of any duty and obligation arising hereunder; provided however, that nothing herein shall obligate either GASCO or MRPC to assume any greater liabilities or obligations than are otherwise provided herein.

15.10 At all times while this Agreement is in effect and for at least two (2) years following termination or expiration thereof, each party to this Agreement shall maintain and preserve complete and accurate records of all accounts and related information and data pertaining to any price, quantity, or other matter concerning the parties' respective rights and obligations under this Agreement, and shall make such records and materials available for inspection and audit during reasonable business hours and upon reasonable notice.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be executed as of the date above first mentioned.

Witness:

Shirley Miller

MANCHESTER RENEWABLE POWER
CORPORATION

By:

Scott D. Salisbury
Scott D. Salisbury, President

Witness:

GASCO, L.L.C.

By:

Charles J. Hesse, III
Charles J. Hesse, III, Member

68298

SCHEDULE A

MANCHESTER METHANE POWER PROJECT PARCEL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying, and being located in Manchester Township, Ocean County, New Jersey, said parcel being a portion of Block 2 Lot 6 now or formerly of Ocean County Landfill Corporation and being further described as follows:

Beginning at a point, said point being the Southwest Corner of the Existing Maintenance Building at the Ocean County Landfill Corporation and running S 53° 52' 36" W 145.39 feet to the Point of Beginning; thence, S 66° 54' 23" W 73.21 feet; thence, S 46° 42' 38" W 63.73 feet; thence, S 66° 54' 23" W 16.98 feet; thence, N 23° 05' 37" W 247.00 feet; thence N 66° 54' 23" E 150.00 feet; thence, S 23° 05' 37" E 225.00 feet to the point or place of beginning.

Containing 0.80 acres of land more or less.

